IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.195 OF 2005

Shri A.B. Menezes & Anr. .... Petitioners
Vs.
Shri Rosarinho D'Costa & Anr. .... Respondents

Shri A.F. Diniz for the Petitioners.
Shri N.N. Sardessai for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: FEBRUARY 16, 2006

P.C:

1. Heard. The petitioners challenge the order passed by the lower Appellate Court condoning the delay of 173 days in filing the application for restoration of the appeal. The contention of the petitioners is that the Court below has failed to apply its mind to the various facts which were brought on record by the petitioners in their reply. The learned Advocate for the respondents, on the other hand, has submitted that the facts justifying the delay in filing the application were disclosed on oath by the respondents and they were not controverted by filing any affidavit in reply and this fact has been considered by the Court below and the Court below has rightly held

that there was no wilful or intentional delay on the part of the respondents in filing the application for restoration.

2. Perusal of the impugned order undoubtedly discloses reference to various reported judgments on the point of exercise of powers of the Court in relation to applications for condonation of delay and further takes into consideration the fact, as rightly pointed out by the learned Advocate for the respondents, that the respondents had filed the application duly supported by an affidavit disclosing the circumstances under which the delay had occurred and there was no counter affidavit thereto. Being so, whatever statements were made on oath had gone unchallenged and undisputed. It is settled law that once statement is made on oath, unless it is denied by filing proper affidavit, the same shall be deemed as established and proved. Being so, the contention of the petitioners that the impugned order discloses non-application of mind on the part of the lower Appellate Court is totally devoid of substance. Indeed, perusal of the impugned order discloses that the lower Appellate Court has exercised its discretion judiciously while condoning the delay in filing the application and, therefore, there is no case for interference in exercise of powers under Article 227 of the Constitution of India. There being no jurisdictional error committed

by the Court below in condoning the delay in filing the application for restoration of the appeal, the impugned order does not warrant interference. The petition, therefore, is rejected. The amount deposited by the petitioners to the extent of Rs.2500/- on 18-1-2006 shall be returned to the petitioners. The petition stands disposed of.